
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

R. WAYNE KLEIN, as Receiver,

Plaintiff,

v.

JUSTIN D. HEIDEMAN, LLC, DBA
HEIDEMAN & ASSOCIATES, a Utah
limited liability company,

Defendant.

**MEMORANDUM DECISION
AND ORDER DENYING
MOTION TO DISMISS**

Case No. 2:19-cv-00854-DN-PK

District Judge David Nuffer

Plaintiff R. Wayne Klein was appointed as receiver in *United States v. RaPower-3, LLC, et al.*, No. 2:15-cv-00828-DN-EJF (D. Utah), over RaPower-3, LLC (“RaPower”), International Automated Systems Inc. (“IAS”), LTB1 LLC, their subsidiaries and affiliates, and the assets of Neldon Johnson and R. Gregory Shepard.¹ Plaintiff subsequently initiated this case to recover funds that are alleged to have been fraudulently transferred to Defendant Justin D. Heideman, LLC from RaPower and IAS.²

Defendant seeks dismissal of Plaintiff’s Complaint under FED. R. CIV. P. 12(b)(6) for failure to state a claim upon which relief can be granted.³ Defendant’s Motion to Dismiss challenges the sufficiency of the Complaint by disputing the Complaint’s allegations, asserting facts that go beyond the Complaint’s allegations, and arguing for inferences from the facts which

¹ Corrected Receivership Order (“*RaPower-3* Receivership Order”), [ECF no. 491](#) in No. 2:15-cv-00828-DN-EJF (D. Utah), filed Nov. 1, 2018.

² Complaint, [docket no. 2](#), filed Oct. 31, 2019.

³ Motion to Dismiss, [docket no. 6](#), filed Dec. 12, 2019.

are favorable to Defendant.⁴ These types of challenges are not appropriate under the standard of review for Rule 12(b)(6).

When reviewing a complaint on a Rule 12(b)(6) motion to dismiss, factual allegations are accepted as true and reasonable inferences are drawn in a light most favorable to the plaintiff.⁵ Each cause of action must be supported by sufficient, well-pleaded facts to be plausible on its face.⁶ And dismissal is appropriate only when the complaint, standing alone, is legally insufficient to state a claim on which relief can be granted.⁷

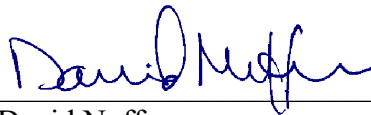
Applying this standard of review to Plaintiff's Complaint, there are sufficient, well-pleaded facts for Plaintiff's avoidance of fraudulent transfers and unjust enrichment claims to be plausible on their face. The Complaint is legally sufficient to state a claim on which relief can be granted.

ORDER

THEREFORE, IT IS HEREBY ORDERED that Defendant's Motion to Dismiss⁸ is DENIED.

Signed February 24, 2020.

BY THE COURT



David Nuffer
United States District Judge

⁴ *Id.*

⁵ *GFF Corp. v. Associated Wholesale Grocers, Inc.*, 130 F.3d 1381, 1384 (10th Cir. 1997).

⁶ *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

⁷ FED. R. CIV. P. 12(b)(6); *Sutton v. Utah State Sch. for the Deaf & Blind*, 173 F.3d 1226, 1236 (10th Cir. 1999).

⁸ Motion to Dismiss, [docket no. 6](#), filed Dec. 12, 2019.